

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DUANE TIPTON,

Plaintiff,

vs.

GUICE, *et al.*,

Defendants.

Case No. 3:17-cv-00032-RCJ-CLB

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Carla L. Baldwin (ECF No. 97) (the Recommendation) entered on November 2, 2020, recommending that the Court deny Defendant Filson's Motion for Summary Judgment (ECF No. 85). No objection to the Recommendation has been filed. This action was referred to Magistrate Judge Baldwin under 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has considered the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. The Court accepts and adopts the factual background and the legal standards of the Recommendation.

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1 Based on the record, however, the Court finds that no trier of fact could reasonably
2 determine that Defendant Filson exhibited deliberate indifference for two reasons. First, the only
3 evidence that Defendant Filson had knowledge of the alleged threats to Plaintiff's safety is the
4 grievance dated January 23, 2016. (ECF No. 88 Ex. A.) Defendant Filson properly denied this
5 grievance as procedurally defective. (ECF No. 88 Ex. B.) As such, there is insufficient evidence
6 to reasonably find that Defendant Filson has knowledge of these alleged threats, so Plaintiff has
7 not satisfied the subjective prong of deliberate indifference. Second, liability under § 1983 only
8 attaches upon the personal participation by a defendant in a constitutional violation. *Taylor v. List*,
9 880 F.2d 1040, 1045 (9th Cir. 1989). The full extent of Defendant Filson's participation in this
10 case in the denial of the grievance. The denial of a prison grievance alone is insufficient to establish
11 the requisite personal participation. *See West v. Cox*, No. 2:15-cv-00665-GMN-VCF, 2017 WL
12 3427973, at *3 (D. Nev. Aug. 8, 2017) (holding denial of grievance insufficient to establish
13 personal participation in a § 1983 action). The Court therefore grants summary judgment in favor
14 of Defendant and rejects the Recommendation in this respect.

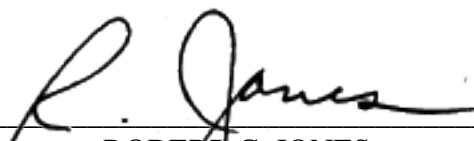
15 CONCLUSION

16 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 97) is
17 ADOPTED IN PART and REJECTED IN PART.

18 IT IS FURTHER ORDERED that Defendant Filson's Motion for Summary Judgment
19 (ECF No. 85) is GRANTED.

20 IT IS SO ORDERED.

21 Dated January 8, 2021..

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23 
24 ROBERT C. JONES
United States District Judge